

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ROBERT M. DEMARS**  
Claimant

VS.

**UNIFIED SCHOOL DISTRICT NO. 305**  
Respondent

AND

**KANSAS ASSOCIATION OF SCHOOL BOARDS  
SELF INSURED FUND**  
Insurance Carrier

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Docket No. 210,496

**ORDER**

Respondent appeals from a preliminary hearing Order of April 3, 1996 wherein Administrative Law Judge Bruce E. Moore granted claimant benefits in the form of medical treatment and temporary total disability compensation.

**ISSUES**

- (1) The nature and extent of claimant's injury and/or disability.
- (2) Whether claimant's accidental injury arose out of and in the course of his employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The first issue raised by respondent regarding the nature and extent of claimant's disability is not an appealable issue from a preliminary hearing pursuant to K.S.A. 44-534a, as amended by S.B. 649 (1996), or K.S.A. 44-551, as amended by S.B. 649 (1996), and will not be considered by the Appeals Board. The respondent's appeal of this issue is dismissed.

An issue of whether or not claimant suffered accidental injury arising out of and in the course of his employment is one listed in K.S.A. 44-534a, as amended by S.B. 649 (1996), as appealable from a preliminary hearing order.

Claimant, an employee of respondent U.S.D. No. 305, alleges accidental injury on August 30, 1995, while unloading a food service truck. Claimant testified that while standing on the Tommy Lift on the back of the truck he slipped and fell, catching himself with his left arm, injuring his left shoulder. Claimant's uncontradicted testimony is that he advised his supervisor, Beulah Bross, of the incident. When she inquired as to what he wanted to do, he replied he would just wait and see if the shoulder got worse. Claimant's shoulder continued to worsen and he had more conversations with Ms. Bross and her successor, Jane Cree, about the problem. It is acknowledged by claimant an accident report was not completed until January 9, 1996. Claimant opined the accident report was completed at this time at his request because the doctor had suggested surgery and had taken claimant off work.

Claimant's testimony in this regard is uncontradicted as neither Ms. Bross nor Ms. Cree testified. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

Respondent contests claimant's credibility, calling the Appeals Board's attention to several entries in the medical reports of both Dr. Alan Kruckemyer and Dr. M. A. Krehbiel. The Appeals Board notes these discrepancies. In assessing the testimony of the claimant and comparing it to the medical reports of the doctors, the Appeals Board finds the explanations provided by claimant to be credible. The Appeals Board finds the Order of Administrative Law Judge Bruce E. Moore, granting claimant benefits after having found claimant suffered accidental injury arising out of and in the course of his employment with the respondent, should be affirmed for preliminary hearing purposes.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bruce E. Moore dated April 3, 1996, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1996.

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**BOARD MEMBER**

c: Robert L. Constable, Salina, KS  
Anton C. Andersen, Kansas City, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director